IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 15367 of 2004(D)

OS.546/1990 OF PRL.SUB COURT,KOTTAYAM

PETITIONER:

KUNJU MOHAMMED, OLAYAPARAMBIL HOUSE,
HOUSE NO.11/52, OLAYAPARAMBIL
NOVELTY LADIES STORES, OLD MUNCIPAL BUS STAND
KOTTAYAM.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.PRAKASH PUTHIADAM
SRI.ROSHIN IPE JOSEPH
SRI.PAUL JACOB (P)
SRI.ROSHEN.D.ALEXANDER

RESPONDENTS:

1. **V.D. EDWARD, S/O. DEVASIA,**
   VARKKATTU HOUSE, KARAPUZHA, KOTTAYAM VILLAGE.

2. **SMT.FATHIMA BEEVI, D/O. KUNJU BHAVA,**
   NEDUMPARAMBIL HOUSE, PERUNNA KIZHAKKA KARA
   AND VILLAGE, CHANGANACHERRY TALUK.

3. **A.M. JALALUDHIN, ANAKULAPARAMBU,**
   THAZHATHANGADY, KOTTAYAM VILLAGE.

4. **SMT.MOLLY NINAN, TRAFFIC ASSISTANT**
   INDIAN AIRLINES, THIRUVANANTHAPURAM.

5. **MOBI NINAN, C/O. SMT.MOLLY NINAN,**
   INDIAN AIRLINES, THIRUVANANTHAPURAM.

6. JUBY NINAN, C/O. SMT.MOLLY NINAN,
INDIAN AIRLINES, THIRUVANANTHAPURAM.

BY ADV. SRI. V.G. ARUN FOR R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.15367 of 2004

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Dated: 4th July, 2007

JUDGMENT

I have heard Mr.Bechu Kurian Thomas, learned counsel for the petitioner on the various grounds raised in the Writ Petition. Learned counsel would invite my attention to the judgment of the Supreme Court in **Udayan Chinubhai v. R.C.Bali** [(1977) 4 S.C.C. 309], the judgment of the Calcutta High Court in **Bholanath v. Madanmohan** (AIR 1988 Calcutta 1) and the judgment of the High Court of Sind in **Khudadad v. Moriokhan** (AIR 1916 Sind 2) and submit that these judgments will show that the view taken by the learned District Judge on the question of limitation is wrong. The above submissions of the learned counsel for the petitioner are attractive. But at this juncture Mr.T.R.Harikumar, learned counsel for the 1st respondent would point out that the impugned order is only an order on the delay petition and the appeal itself was rejected by the court below. The order rejecting the appeal is yet to be challenged by the writ petitioner. Mr.Bechu Kurian Thomas would now submit that an appeal was attempted to be filed but the same was returned by the Registry on the reason that the remedy lies under the supervisory jurisdiction of this court under Article 227 of the Constitution. Counsel sought leave

to file a fresh Writ Petition challenging the order or to pursue other proper remedies available to the petitioner. Leave is granted. It appears to me that the remedy of the petitioner under law as settled by the Supreme Court is to file a Second Appeal itself, the petitioner can represent the S.A. which is returned by the Registry to him on the reason that the same is not maintainable. The Writ Petition will stand closed. However in view of the directions given hereinabove, the order of stay presently passed will continue for two more months.

srd **PIUS C.KURIAKOSE, JUDGE**